



May 20, 1997

DOCKET FILE COPY ORIGINAL

SBC Communications Inc.
1401 I Street, N.W.
Suite 1100
Washington, DC 20005

RECEIVED

MAY 20 1997

Federal Communications Commission
Office of Secretary

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Dear Mr. Caton:

Re: *WT Docket No. 95-157, RM-8643 - Amendment to the Commission's Rules
Regarding a Plan for Sharing the Costs of Microwave Relocation*

On behalf of Pacific Bell Mobile Services, please find enclosed an original and six copies of its "*Opposition*" in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,

Gina Harrison For G.H.
Gina Harrison
(202) 383-6423

Enclosure

No. of Copies rec'd
by ABCDE

204

DOCKET FILE COPY ORIGINAL
Before the
FEDERAL COMMUNICATION COMMISSION
Washington, D.C. 20554

RECEIVED
MAY 20 1997
Federal Communications Commission
Office of Secretary

In the Matter of

Amendment to the Commission's Rules Regarding a
Plan for Sharing the Costs of Microwave Relocation

WT Docket No. 95-157
RM-8643

Opposition of Pacific Bell Mobile Services

I. Introduction.

Pacific Bell Mobile Services ("PBMS") hereby submits its Opposition to the Petitions for Reconsideration filed in the above-captioned proceeding.¹ The Petitions for Reconsideration are limited to that part of the Commission's Second Report and Order that allows microwave incumbents to participate in the cost-sharing plan.² In all cases, the Petitions seek to liberalize the rules around participation by the microwave incumbents at the expense of the PCS licensees. Although we do not oppose allowing microwave incumbents who self-relocate to participate in cost sharing, as explained in greater detail in the following, we oppose changes in the rules that unduly favor the microwave incumbents.

¹ Amendment of the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, WT Docket No. 95-157, RM-8643, Second Report and Order, released February 27, 1997. ("Second Report and Order").

² Id. at paras. 25-27.

II. The Commission Was Correct To Require That Depreciation Be Applied To The Cost Sharing Formula For Microwave Incumbents.

In the Second Report and Order, the Commission decided that because the microwave incumbents receive benefits from voluntarily relocating, depreciation was a method of ensuring that the microwave incumbents pay for the benefits rather than passing them on to a PCS licensee.³ We strongly agree.

The American Petroleum Institute, (“API”) , UTC, The Telecommunications Association (“UTC”), and the South Carolina Public Service Authority, (“Santee Cooper”) all seek reconsideration of this decision.⁴ API argues that the Commission failed to explain why it applies depreciation to microwave incumbents but not to PCS providers who relocate links outside of their service areas or spectrum blocks.⁵ There is no reason why the Commission should have to equate the two. The PCS providers and the microwave incumbents are not similarly situated. The PCS providers have bought and paid for spectrum. They need to get their systems up and running as soon as possible. In order to do so, they must relocate any microwave links with which they would interfere. To do that in the most expeditious way, in some cases, they need to relocate links that are part of a system that they would not have interfered with. It is entirely appropriate to require subsequent PCS licensees that benefit from such relocation to share the full cost, rather than the depreciated cost.

³ Id. at para. 27.

⁴ API, pp. 9-11; UTC, pp. 2-5; Santee Cooper, pp. 9-12.

⁵ API, p. 10.

The microwave incumbents are in a completely different position. There are no pressing business needs to move quickly. The rules guarantee that if a link needs to be relocated, the microwave incumbent will receive comparable facilities at no cost.⁶ The entire burden for a smooth transition to comparable facilities rests with the PCS licensee. There may be reasons why a microwave incumbent would choose to relocate voluntarily. As the Commission notes, "early relocation by the incumbent on a voluntary basis provides more options for obtaining alternative spectrum, more control over the relocation process, and reduces uncertainty about further operation."⁷ There are benefits that the incumbent voluntarily chooses to pursue. They are not benefits for which a PCS licensee should pay. Depreciation ensures that they do not. The Commission should not depart from its conclusion on this matter.

III. The Starting Date For Participation By Microwave Incumbents In The Cost Sharing Plan Should Be The Effective Date Of The Second Report And Order.

Santee Cooper, API and UTC all argue that microwave incumbents should be eligible for reimbursement of relocation expenses incurred after April 5, 1995.⁸ We disagree.

The Commission's rule requires that incumbents seeking reimbursement must submit to the clearinghouse an independent third party appraisal of its compensable relocation costs.⁹ "The appraisal should be based on the actual cost of replacing the

⁶ 47 CFR §101.75.

⁷ Second Report and Order, para. 27.

⁸ Santee Cooper, p. 5; API, pp. 6-7; UTC, p. 7.

⁹ 47 CFR §24.245(b).

incumbent facilities, and should exclude the cost of any equipment upgrades that would not be reimbursable under the cost-sharing plan.”¹⁰

This type of evaluation by a third party would be difficult to make for a relocation that took place in the past. Old equipment would be gone. Without a concrete understanding of the prior system, disputes would arise about the comparability of the new system.

Moreover, any incumbent that self-relocated prior to the Second Report had no assurance of any compensation. Thus, self-relocations were done for independent businesses reasons that overrode the need for guaranteed compensation.

While the Commission saw benefit from the participation of microwave incumbents in cost sharing, it was also concerned that safeguards be in place to ensure that microwave incumbents that voluntarily relocate do not receive compensation in excess of the costs of a comparable system. Making the effective date of the Second Report and Order the starting time for participation by the microwave incumbents supports this safeguard. It ensures that a third party evaluation can be based on accurate contemporaneous data, not on past information that needs to be reconstructed.

IV. Conclusion.

The Commission’s rules on microwave relocation cost sharing balance the needs of the PCS licensees that relocate microwave links early with those licensees that relocate at a later time. The Second Report and Order also balances the needs of those microwave incumbents that may find it useful to self-relocate with the PCS licensees.

¹⁰ Second Report and Order, para. 28.

The Petitions for Reconsideration seek to upset that balance by favoring the position of the microwave incumbents involved in self-relocation. The incumbents are well protected under the current rules. They are always guaranteed comparable facilities. There is no need for the Commission to change the rules to support self-relocation to the detriment of the PCS licensees. We respectfully request that the Petitions for Reconsideration be denied.

Respectfully submitted,

PACIFIC BELL MOBILE SERVICES



JAMES P. TUTHILL
BETSY STOVER GRANGER

4420 Rosewood Drive
4th Floor, Building 2
Pleasanton, CA 94588
(510) 227-3140

Its Attorneys

May 20, 1997

CERTIFICATE OF SERVICE

I, Kachina Boyd, do hereby certify that a copy of the foregoing **OPPOSITION OF PACIFIC BELL MOBILE SERVICES** was mailed on this 20th day of May 1997, via first class United States mail, postage prepaid to the parties listed below.

Jeffrey L. Sheldon
Thomas E. Goode
UTC
1140 Connecticut Avenue, NW, Suite 1140
Washington, D.C. 20036

Wayne V. Black
for American Petroleum Institute
Keller and Heckman
1001 G Street, Suite 500 West
Washington, D.C. 20001

Robert M. Gurss
Rudolph J. Geist
for South Carolina Public Service Authority
Wilkes, Artis, Hedrick & Lane
1666 K Street, NW, Suite 1100
Washington, DC 20006


Kachina Boyd